

REMARKS

Entry of the foregoing amendments and reconsideration of this application are respectfully requested in view of the following remarks. Claims 1, 3-14, 16-18, 20-22, and 27-38 are pending in the application, with claims 1, 12, 27-28, 32 and 36 being the independent claims. The Applicants respectfully submit that these amendments introduce no new matter. Based on the above Amendments and the following Remarks, the Applicants respectfully request that the Examiner enter these amendments, and then reconsider and withdraw all outstanding rejections.

Interview Summary

The undersigned would like to thank Examiner Clow for the courtesies extended during the telephonic interview conducted on September 13, 2007. During the interview, the merits of the outstanding rejections and potential claim amendments were discussed.

Information Disclosure Statement

The Applicants note that the Examiner considered references 77 and 154 from the information disclosure statement filed on April 6, 2006. The Examiner, however, did not consider references 80, 86, and 139 from the information disclosure statement filed on April 6, 2006. The Examiner indicates that such references were not considered because “retrieval from the internet” does not constitute actual publication dates.

Regarding reference 80, the Applicants note that such reference cites to a reference published in 1989. Regarding references 86 and 139, the Applicants submit that the references are published and publicly available at least as of the dates that they were retrieved from the internet. In fact, MPEP Section 707.05(e) provides a manner in which electronic documents may be cited in patent applications. Examples of such citations are also provided. (MPEP Section 707.05(e)). One of such examples, provides a “retrieval from internet” date which appears to be a sufficient “publication date.” (MPEP Section 707.05(e), example 7). Furthermore, reference 86 includes an indication that the reference was published on November 14, 1996.

Accordingly, the Applicants respectfully request that the examiner consider the references.

The Claims As Amended Are Directed To Patentable Subject Matter

Claims 28-35 stand rejected under 35 U.S.C. § 101, because the claims are directed to non-statutory subject matter. Independent claim 28 has been amended to recite “certifying to a user that the test sample is accepted for analysis if the degree of error between the test centroid and the centroid associated with the preferred diluent is acceptable.” Similarly, independent claim 32 has been amended to recite “certifying to a user that the test sample is accepted for analysis if the displacement of the at least one test centroid from the at least one centroid associated with the preferred diluent is within an acceptable distance.”

As discussed in the telephonic interview, the Applicants respectfully submit that independent claims 28 and 32 and those claims that depend therefrom (claims 29-31 and 33-35) are directed to statutory subject matter. Indeed such independent claims recite “certifying to a user” which provides for a concrete, tangible, and useful outcome.

The Applicants submit that the amendments to independent claims 28 and 32 are supported in the specification as filed. For example, paragraphs [0012] and [0031]-[0033] of the specification as filed indicate that spectrums produced by a serum sample that map to the control model (are certified) and may be used for further analysis. Paragraph [0027] indicates that there may be some communication between the system and a user and that a user may be involved in a selection process for at least a portion of the process. Furthermore, paragraph [0047] indicates that, based on the testing in one example, a determination was made that multichannel acquisition mode should be used on the Q-star mass spectrometer. Additionally, with respect to the amendments made to independent claims 28 and 32, the Applicants submit that one of skill in the art would understand that the certifying described in the specification is provided to a user. Indeed, this certifying is the very information that is useful in determining the inconsistencies, if any, in the spectral data as described in paragraph [0005] of the specification as filed.

Accordingly, the Applicants respectfully request that the rejection to claims 28-35 be withdrawn.

The Claims As Amended Are Definite

Claims 1, 3-14, 16-18, 20-22, and 27-38 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. As discussed in the interview, independent claim 1 has been amended to recite "certifying that the test spectrum is acceptable for analysis in the bioassay if it is determined that the test spectrum maps to the n-dimensional space within an acceptable distance from said at least one centroid in the control model." Independent claims 12, 27, 28, 32, and 36 have been similarly amended. The Applicants submit that claims 1, 3-14, 16-18, 20-22, and 27-38 are definite and respectfully request that the rejections of such claims be withdrawn.

CONCLUSIONS

All of the stated grounds of rejection have been properly traversed or rendered moot. The Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. Applicants believe that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that further personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

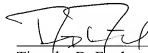
Prompt and favorable consideration of this Amendment is respectfully requested.

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